

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON,

Plaintiff,

v.

DINAV HOLDING, INC., a Florida
Corporation; JONATHAN DIAZ, as
President of DINAV HOLDING, INC.,
individually and on behalf of his marital
community; and JUAN CARLOS DIAZ,
as Vice President of DINAV HOLDING,
INC., individually,

Defendants.

NO. 2:12-cv-02118

~~[PROPOSED]~~ ORDER FOR
ENTRY OF DEFAULT
JUDGMENT AGAINST
DEFENDANTS, JONATHAN
DIAZ AND DINAV HOLDING,
INC. AND MOTION TO DISMISS
DEFENDANT JUAN CARLOS
DIAZ



I. JUDGMENT SUMMARY

This matter comes before the Court on Plaintiff's, the State of Washington, Motion for Default Judgment against Defendants Charles Jonathan Diaz and Dinav Holding, Inc. and Motion to Dismiss Defendant Juan Carlos Diaz without prejudice.

1.1 Judgment Creditor:

STATE OF WASHINGTON

1.2 Judgment Debtor:

DINAV HOLDING, INC., a Florida
corporation, and JONATHAN DIAZ,
individually and on behalf of his marital

[PROPOSED] ORDER FOR ENTRY OF
DEFAULT JUDGMENT AGAINST
DEFENDANTS, JONATHAN DIAZ AND DINAV
HOLDING, INC. AND MOTION TO DISMISS
DEFENDANT JUAN CARLOS DIAZ
CASE NO. 2:12-CV-02118

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ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7745

community and as President of Dinav Holding Inc.

1.3 Principal Judgment Amount: \$49,348,443.08

1.4 Post Judgment Interest Rate: 15% per annum, beginning twelve months from the date of Judgment.¹

1.5 Attorney for Judgment Creditor: Paula Selis, Senior Counsel

Plaintiff, State of Washington, having filed a Complaint for Injunctive and Additional Relief under the Telephone Consumer Protection Act (TCPA), 47 U.S.C. §227, the Commercial Electronic Mail Act (CEMA), Wash. Rev. Code §19.190; and the Consumer Protection Act (CPA) Wash. Rev. Code §19.86, on December 6, 2011; and

Defendants Dinav Holding, Inc. and Jonathan Charles Diaz, having been served with copies of the Complaint herein; and

Defendant Juan Carlos Diaz, having not been served; and

Plaintiff appearing by and through its attorney, Robert Ferguson, Attorney General, and Paula Selis, Senior Counsel; and

Defendants Dinav Holding, Inc. and Jonathan Charles Diaz, having failed to appear or file any responsive pleading to the Complaint; and

The Court having determined that there is no just reason for delay in the entry of a final judgment against Defendants Dinav Holding, Inc. and Jonathan Charles Diaz, and dismissal of this matter against Juan Carlos Diaz, and being fully advised, the Court hereby makes and enters the following:

II. FINDINGS OF FACT

2.1 Defendant Dinav Holding Inc. is a Florida for-profit corporation. Its principal place of business is located at 3049 Getty Way, Apartment 104, Orlando, Florida 32835-2485. It has transacted business in the state of Washington and in the Western District of Washington.

¹ See U.S. Federal Reserve Statistical Release H.15 (519), March 13, 2013.

1 2.2 Defendant Jonathan Charles Diaz is the President of Defendant Dinav Holding, Inc.
2 Jonathan Charles Diaz resides at 4500 Oakcreek St. #114, Orlando Florida 32835. Jonathan
3 Charles Diaz has transacted business in the State of Washington and in the Western District of
4 Washington.

5 2.3 On May 14 and 15, 2012, Defendants sent 49,309 unsolicited commercial text
6 messages to Washington-based cellular phones using an automatic telephone dialing system.
7 Defendants used two Florida-based numbers to send the text messages: (407) 797-1051 and
8 (407) 748-3393.

9 2.4 The text messages contained a hypertext link to the Defendants' website,
10 www.5minutespeedloan.com.

11 2.5 Defendants initiated or provided substantial assistance of support to those who initiated
12 the text messages.

13 2.6 Defendants sent the text messages to Washington-based cellular phones to promote the
14 sale of payday loan services.

15 2.7 Defendants, Jonathan Charles Diaz and Dinav Holding Inc., were served with the
16 Complaint and Summons as required by Fed. R. of Civ. P. 4 on December, 10, 2012.

17 2.8 The State of Washington was unable to effectuate service on Defendant Juan Carlos
18 Diaz, despite repeated attempts to locate and serve him.

19 2.9 Defendants, Jonathan Charles Diaz and Dinav Holding Inc., each failed to file an
20 Answer within the time set forth by Fed. R. of Civ. P. 12(a) or otherwise defend this action.

21 2.10 The Clerk of the Court, pursuant to Fed. R. Civ. P. 55(a), entered a default against
22 Defendants Jonathan Charles Diaz and Dinav Holding Inc. on February 21, 2013.

23 2.11 Defendants are jointly and severally liable for the violations attributed to them as
24 described above.
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III. CONCLUSIONS OF LAW

3.1 This Court has jurisdiction of the subject matter of this action and of the parties hereto, and Plaintiff's Complaint states claim upon which relief may be granted.

3.2 The Attorney General has jurisdiction to bring this action under RCW 19.86.080 and 47 U.S.C. §227(g)(1).

3.3 Defendants' conduct as described in Findings of Fact 2.3 through 2.6 constitutes 49,309 violations of the Telephone Consumer Protection Act, 47 U.S.C. §227.

3.4 Defendants' conduct as described in Findings of Fact 2.3 through 2.6 constitutes violations of the Commercial Electronic Mail Act, Wash Rev. Code §19.190.

3.5 Defendants' conduct as described in Findings of Fact 2.3 through 2.6 constitutes 49,309 violations of the Consumer Protection Act, Wash. Rev. Code §19.86.

3.6 Plaintiff is entitled to a Decree ordering Defendants to pay the amounts as described herein, including reasonable attorney's fees and costs.

The Court having made the foregoing Findings of Fact and Conclusions of Law, and in accordance therewith, the Court enters the following.

IV. JUDGMENT AND DECREE

NOW, THEREFORE, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

4.1 Pursuant to 47 U.S.C. §227(g)(1), Plaintiff shall receive and Defendants shall pay \$24,654,500.00, which constitutes statutory damages for 49,309 violations of the TCPA, calculated at the statutory damages rate of \$500 per violation.

4.2 Pursuant to Wash. Rev. Code §19.86.140, Plaintiff shall receive and Defendants shall pay \$24,654,500.00 in civil penalties, which constitutes a civil penalty for 49,309 violations of the CPA, calculated at the rate of \$500 per violation.

1 4.3 Pursuant to Wash. Rev. Code §19.86.080, Plaintiff shall receive and Defendants shall
2 pay \$39,443.08 in attorney's costs and fees, which amount is reasonable.

3 4.4 The matter against Defendant Juan Carlos Diaz is dismissed without prejudice.

4 4.5 Defendants, Dinav Holding, Inc. and Jonathan Charles Diaz, and their successors,
5 assigns, transferees, officers, agents, servants, directors, employees, and all other persons or
6 entities in active concert or participation with Defendants are hereby enjoined and restrained
7 from engaging in the following acts and practices in connection with any business:

8 a. Initiating or assisting in the transmission of electronic commercial text
9 messages to Washington residents with phones equipped with short message capability;

10 b. Making calls to any telephone number assigned to a cellular telephone
11 service using any automatic telephone dialing system or an artificial or
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prerecorded voice without consent of the recipient;

c. Violating the Consumer Protection Act, Wash. Rev. Code § 19.86 et seq.

Dated this 18th day of March, 2013, in Seattle, Washington.


UNITED STATES DISTRICT JUDGE

Presented by:
ROBERT W. FERGUSON
Attorney General

By: s/ Paula Selis
PAULA SELIS, WSBA No. 12823
Assistant Attorney General
Attorney General of Washington
800 5th Ave, Suite 2000
Seattle, WA 98104-3188
Phone: (206) 464-7662
Fax: (206) 587-5636
E-mail: Paula.Selis@atg.wa.gov
Attorneys for Plaintiff State of Washington